

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FEDERATION OF STATE MASSAGE
THERAPY BOARDS,

Plaintiff,

v.

MENDEZ MASTER TRAINING CENTER,
INC., MMTC TEXAS, INC., TESLA SHEN
MENDEZ (f/k/a § YI LING "ELAINE"
MENDEZ), JORGE MENDEZ, and JOHN
DOES 1-5.

Defendants

Case No. 4:17-cv-02936

**DECLARATION OF TESLA SHEN MENDEZ IN SUPPORT OF OPPOSITION
TO COUNTER DEFENDANT'S MOTION TO DISMISS COUNTERCLAIM;
REQUEST FOR LEAVE TO AMEND**

I, Tesla Shen Mendez, declare and state as follows:

1. I am one of the defendants and counterclaimants in this matter. I have personal knowledge of the matters set forth in this declaration based on my direct involvement.

2. I make this declaration in support of counter-claimants' request for leave to supplement/amend the negligence claim with further facts as to the reasonable foreseeability of harm to students denied test entrance flowing to MMTC.
3. I am one of the owners of Mendez Master Training Center, Inc. and MMTC Texas, Inc.
4. Our business of preparing non-English-speaking Chinese people for the massage therapy examination administered by cross defendant was done in the open, along with three to five other similar Chinese language test preparation services in the Los Angeles area. This business was vibrant with a test preparation service typically having as many as 15-20 test takers per test preparation school per exam. These Chinese language test preparation services are also located throughout the country, as Chinese test takers are in virtually every state of the United States. Cross complainant has specific knowledge of Chinese language test takers being turned away from the examination in California, Texas, and New Mexico. The number of Chinese language test takers was and continues to be significant, well enough to be noticed by Cross Defendant. Cross defendant has obviously noticed cross complainant enough to take steps to shut cross complainant down.

5. It was thus a reasonably foreseeable event that each of these non-English-speaking test takers would be highly likely to have been a student at a test preparation service such as cross complainants. These test preparation services provided a regular flow of test takers to counter-defendant's test taking sites. It is further reasonably foreseeable that the injury to the students would also flow to the test preparation service. The damage that flows to the test preparation service providers such as cross complainant include: loss to reputation and standing because students will blame the test preparation service for this problem; loss of referrals from students turned away from the exam; it is very normal for successful students to provide referrals to cross complainant, and for students who don't get entrance, they typically do not provide referrals. Cross complainant has a service guaranty under which she allows the students to return for no extra school fees.

This causes specific damages described as follows:

- a. damages arising from Plaintiff's improper practice of regularly denying defendants/counter-claimants' students access to sit and take plaintiff's MBLEx examination; and damages from the improper designation of a refusal to permit access to take the exam as a "no show" and a failure to pass the exam, which data reported by plaintiff/counter-defendant the consuming public. This practice substantially reduces defendant school's pass rate. Defendants have not calculated these damages substantially caused by Plaintiff's improper conduct, and requests the equitable relief of injunctive relief in the form of requiring plaintiff to state defendants' pass

rate accurately by not designating a failure to allow to sit for the exam as a "no show" and a failure to pass the exam

- b. restitutionary disgorgement. Defendants will seek damages, which will be based on lost business to defendants caused by customers deciding to take the test through other service providers [of which there are many].

6. As for FSMTB's point that it is a mere test-administrator, the following further fact is given:

7. A separate company by the name of Pearson is the exam administrator. See excerpts of Pearson VUE's website at <https://home.pearsonvue.com>., a true and correct copy of which is attached hereto as Exhibit A.

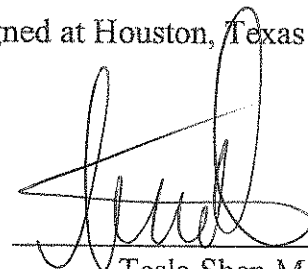
8. The FSMTB does not administer the exam. Instead, Pearson' provides the following exam-related functions:

- a. It provides the physical place/venue for the exam.
- b. Pearson's people are the ones that perform the test-take check-in procedure.
- c. Person provides the computer hardware and software at each test-taking station at the exam site.
- d. Pearson collects up the test answers, and reports those to the FSMTB.

9. Note that in its website, Pearson states that:

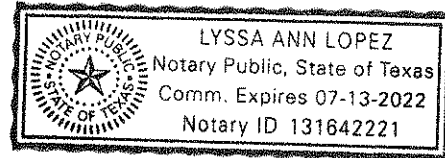
“From online practice tests to high-stakes, proctored exams that require the industry’s most secure testing environments, Pearson VUE is the leader in computer-based testing – and much more.”

I declare under oath and penalty of perjury under the laws of the state of Texas, that foregoing is true and correct, and that this declaration was signed at Houston, Texas on October 19, 2018.


Tesla Shen Mendez

10/19/2018





LIST OF EXHIBITS

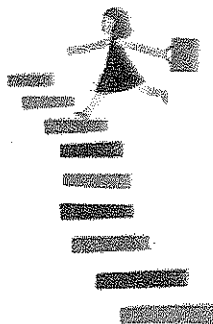
Exhibit A: Excerpts of Website of Pearson VUE, <https://home.pearsonvue.com>

Exhibit A

The global leader in computer-based testing

What we do

Each year millions of people around the world take an exam with Pearson VUE. Chances are you, or someone you know, has recently tested with us. Your neighbor, the computer programmer ... your dad's nurse, children's teacher, real estate agent or college grad who wants to go to business school ... all demonstrate their knowledge, skill and commitment when they test with Pearson VUE.



More than 450 credential owners across the globe choose Pearson VUE to help **develop** (</Test-Owner/Develop-your-program.aspx>), **manage** (</Test-Owner/Manage-your-program.aspx>), **deliver** (</Test-Owner/Deliver-your-exam.aspx>) and **grow** (</Test-Owner/Grow-your-program.aspx>) their testing programs. From online practice tests to high-stakes, proctored exams that require the industry's most secure testing environments, Pearson VUE is the leader in computer-based testing — and much more.

We serve test owners and test takers in nearly every industry.

- **Academia & admissions** (</Test-Owner/Industries-served/Academic-Admissions.aspx>)
- **Financial & related services** (</Test-Owner/Industries-served/Financial->

services.aspx)

- Government (/Test-Owner/Industries-served/Federal.aspx)
- Health care (/Test-Owner/Industries-served/Healthcare.aspx)
- Information technology (IT) (/Test-Owner/Industries-served/Information-Technology-(IT).aspx)
- Military (/Test-Owner/Industries-served/Military.aspx)
- US licensing & global regulatory (/Test-Owner/Industries-served.aspx)

Who we are

Brave. Imaginative. Decent. Accountable. These words aren't just a slogan; they are among our most important values. Woven into the fabric of our corporate culture, these principles have served us well — resulting in the industry's most innovative products and services, creative and productive working relationships and respectful, honest communications. Pearson VUE is part of **Pearson** (<http://www.pearson.com/>), the world's largest learning company with more than 35,000 employees working across the globe.

Why we're chosen

It's simple really. We call it the Pearson VUE difference. We built the Pearson VUE business on state-of-the-art technology that enables us to reliably deliver exams and provide the highest levels of service to our clients and their candidates around the world.

Learn more about our capabilities (/Test-Owner/Industries-served/Develop-manage-deliver-grow.aspx) and the many ways we serve our customers and test takers.

Where we are

Pearson VUE is headquartered in suburban Minneapolis, Minnesota, with regional offices in the United States, the United Kingdom, Dubai, Australia, India, Japan and China. Find our office addresses and contact information (/Contact-Us.aspx).

About Pearson VUE

Company information (/About-Pearson-VUE/Company-information.aspx)

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- Our accreditations (/About-Pearson-VUE/Company-information/Our-accreditations.aspx)
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[Market expertise \(/Test-Owner/Market-expertise.aspx\)](/Test-Owner/Market-expertise.aspx)

[Research \(/Test-Owner/Research.aspx\)](/Test-Owner/Research.aspx)

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[Voucher store \(/For-test-centers/Voucher-store.aspx\)](/For-test-centers/Voucher-store.aspx)

Pearson VUE Network ▲



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[\(https://www.linkedin.com/company/2141?](https://www.linkedin.com/company/2141?trk=tyah&trkInfo=tarId%3A1409733568695%2Ctas%3Apearson%20vue%20%2Cidx%3/1-4)

[trk=tyah&trkInfo=tarId%3A1409733568695%2Ctas%3Apearson%20vue%20%2Cidx%3/1-4\)](https://www.linkedin.com/company/2141?trk=tyah&trkInfo=tarId%3A1409733568695%2Ctas%3Apearson%20vue%20%2Cidx%3/1-4)



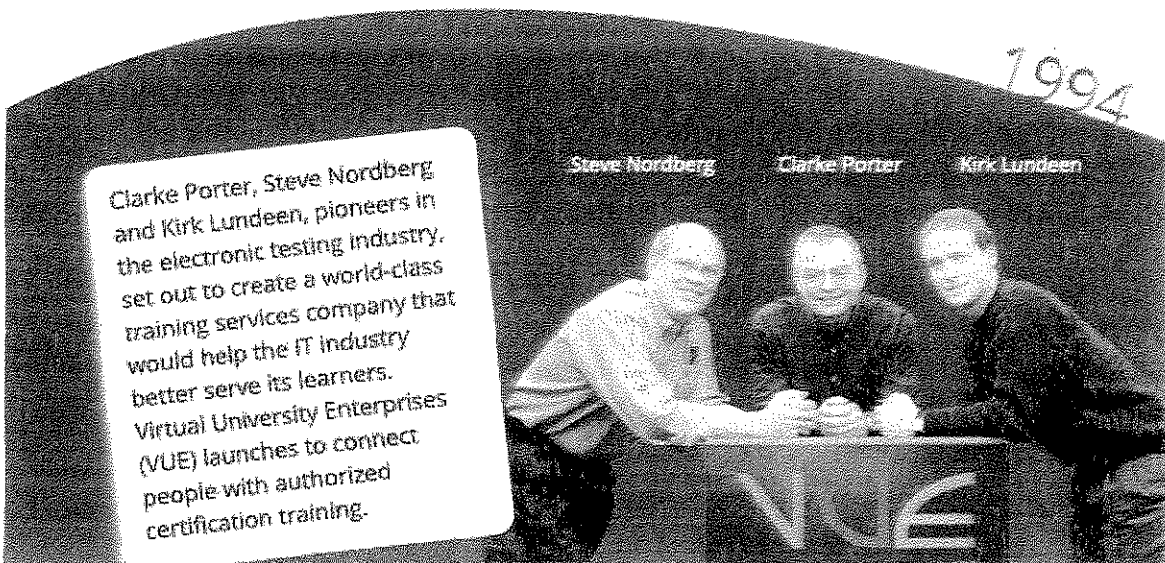
[\(https://www.youtube.com/channel/UCy21pJcLIhThj3AtBbSeWDw\)](https://www.youtube.com/channel/UCy21pJcLIhThj3AtBbSeWDw)

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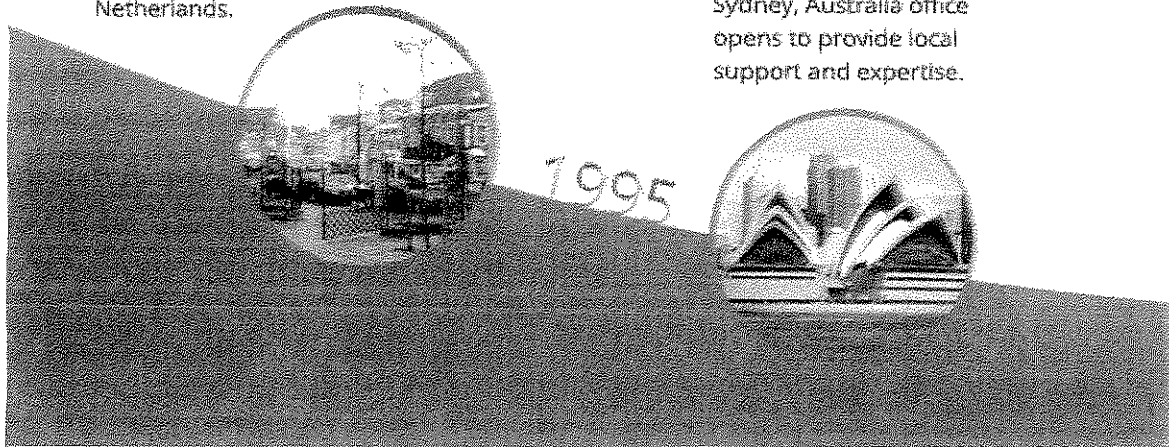
Company history



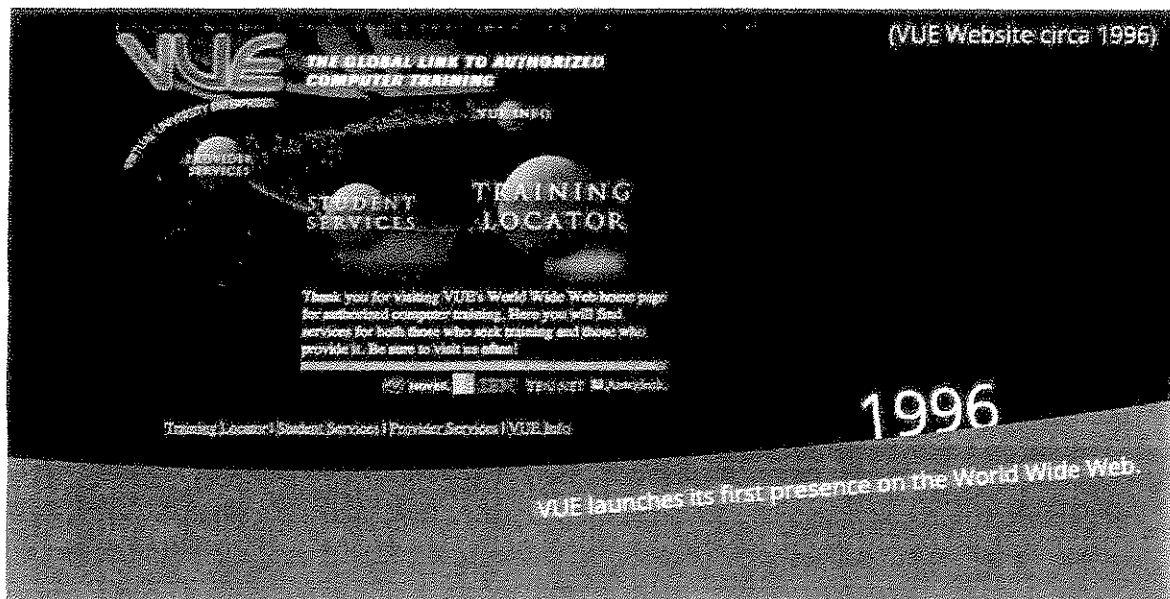
1994: Clarke Porter, Steve Nordberg and Kirk Lundeen, pioneers in the electronic testing industry, set out to create a world-class training services company that would help the IT industry better serve its learners. Virtual University Enterprises (VUE) launches to connect people with authorized certification training.

European call center
established under the name
VUE Europe BV, in Woerden,
Netherlands.

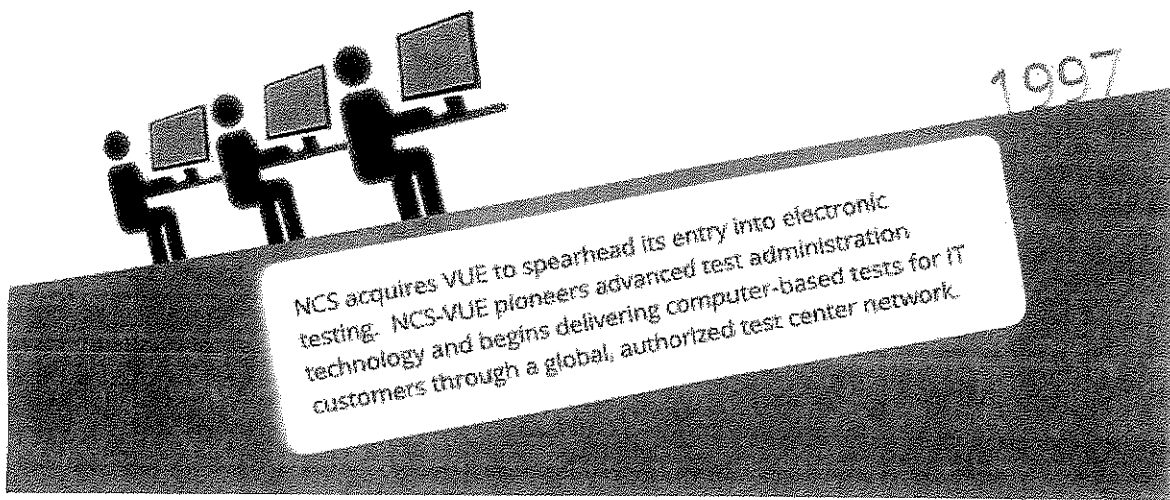
Sydney, Australia office
opens to provide local
support and expertise.



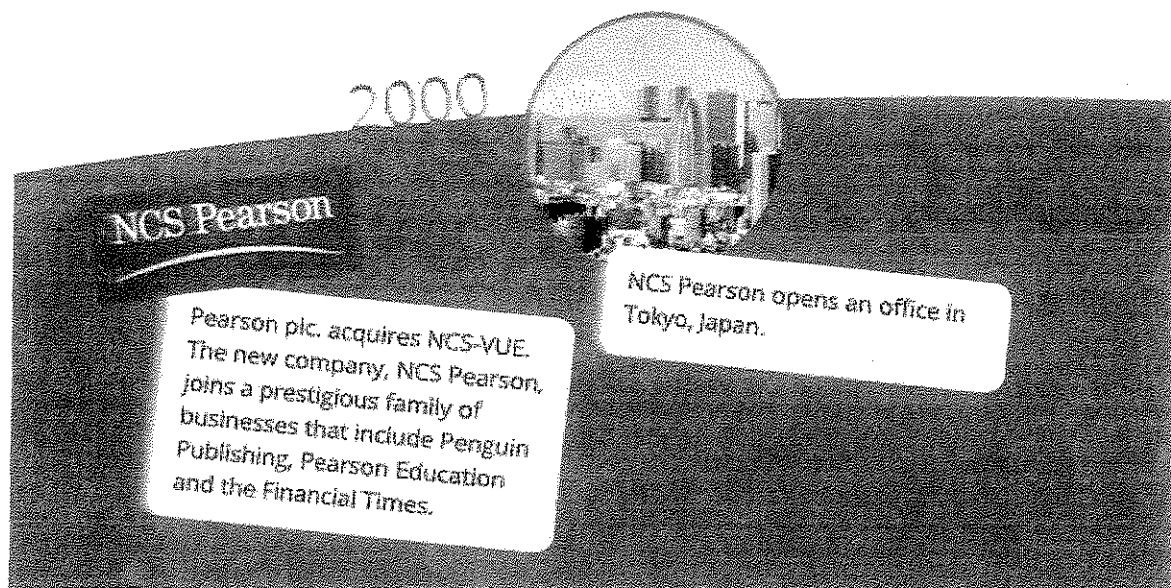
1995: European call center established under the name VUE Europe BV, in
Woerden, Netherlands. • Sydney, Australia office opens to provide local support
and expertise.



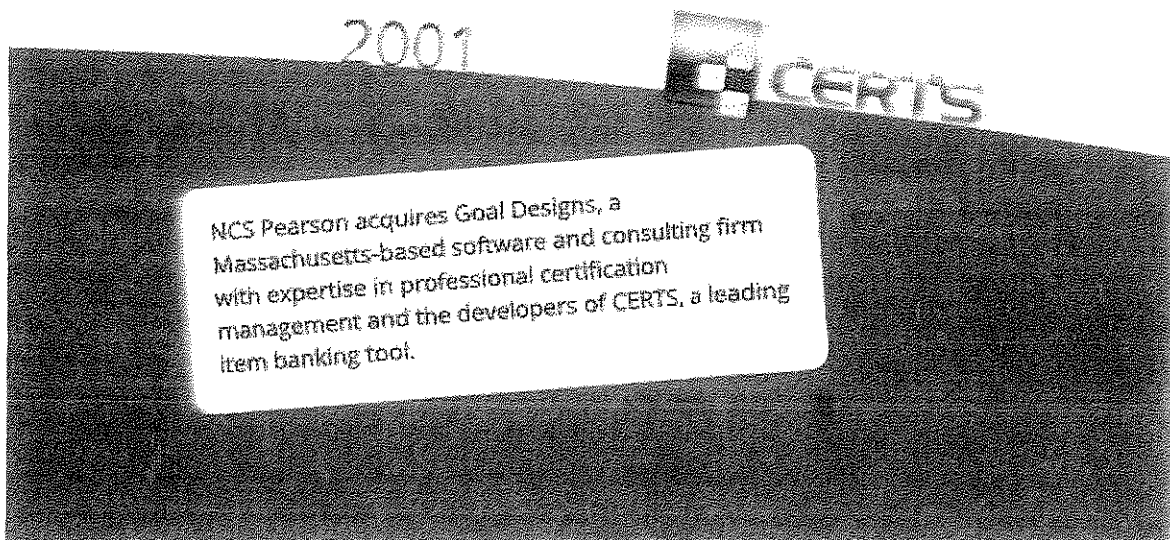
1996: VUE launches its first presence on the World Wide Web.



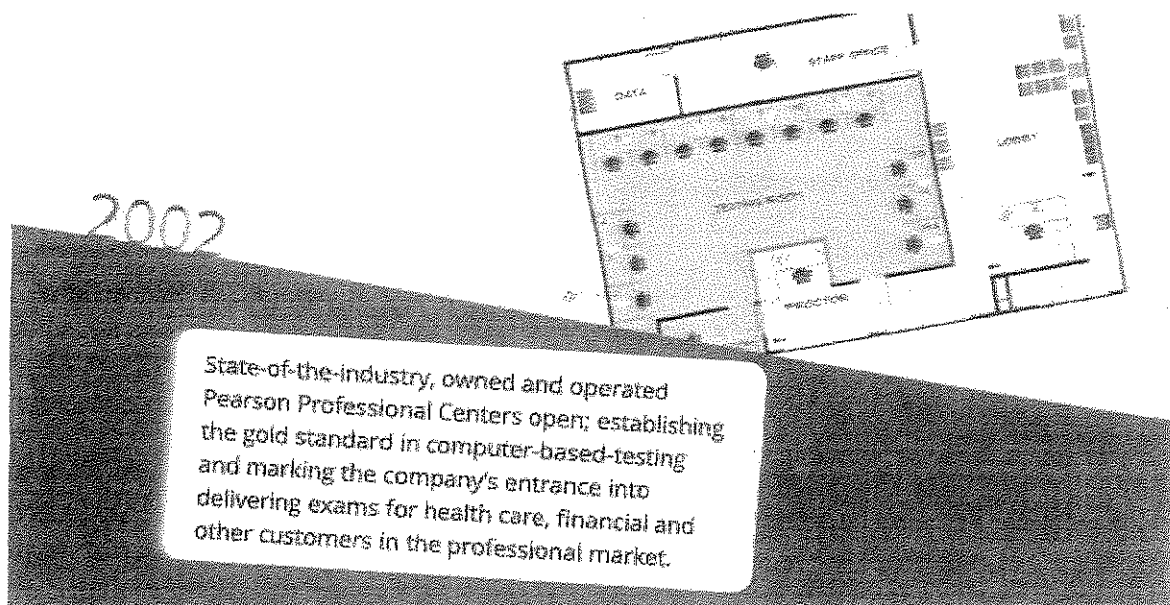
1997: NCS acquires VUE to spearhead its entry into electronic testing. • NCS-VUE pioneers advanced test administration technology and begins delivering computer-based tests for IT customers through a global, authorized test center network.



2000: Pearson plc. acquires NCS-VUE. The new company, NCS Pearson, joins a prestigious family of businesses that include Penguin Publishing, Pearson Education and the Financial Times • NCS Pearson opens an office in Tokyo, Japan.



2001: NCS Pearson acquires Goal Designs, a Massachusetts-based software and consulting firm with expertise in professional certification management and the developers of CERTS, a leading item banking tool.



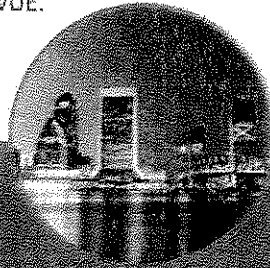
2002: State-of-the-industry, owned and operated Pearson Professional Centers open, establishing the gold standard in computer-based-testing and marking the company's entrance into delivering exams for health care, financial and other customers in the professional market.



Pearson VUE receives patent for unique security design of Pearson Professional Centers.

Company's official name becomes Pearson VUE.

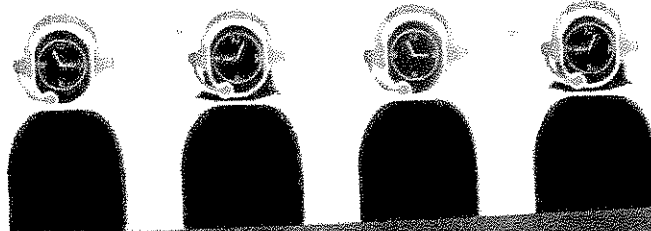
2003



The New Delhi, India office opens expanding our presence and local support into India.

2003: Company's official name becomes Pearson VUE. • Pearson VUE receives patent for unique security design of Pearson Professional Centers. • The New Delhi, India, office opens expanding our presence and local support into India.

UK-based call center begins operations.



2004

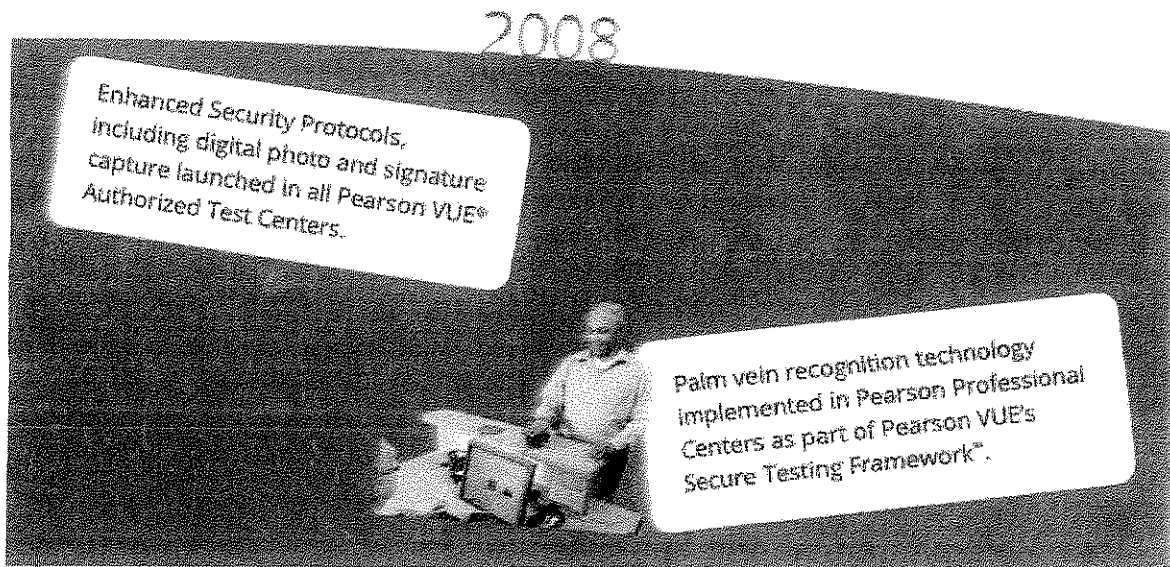
2004: UK-based call center begins operations.



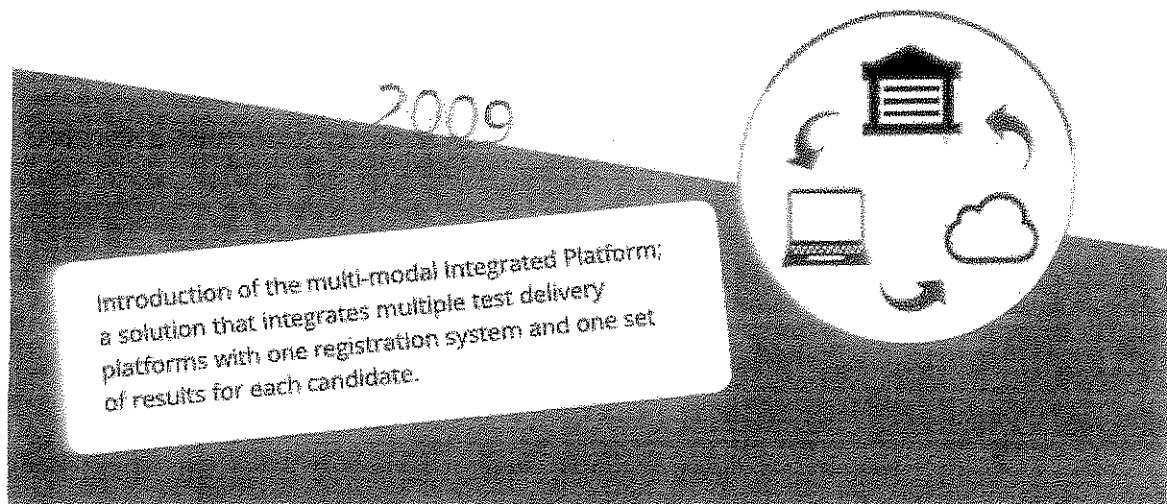
2005: European office moves to London.



2006: Pearson VUE acquires Promissor, a leading provider of knowledge measurement services with a focus on professional assessments in the real estate, insurance, mortgage lending, contracting, employment and health care industries. The acquisition launches Pearson VUE into the regulatory market. • Agreement signed with DANTES to locate Pearson VUE® Authorized Test Centers on American military installations. • Launch of Pearson VUE Authorized® Test Center-Selects, providing clients increased security and additional global reach.



2008: Enhanced Security Protocols, including digital photo and signature capture launched in all Pearson VUE® Authorized Test Centers • Palm vein recognition technology implemented in Pearson Professional Centers as part of Pearson VUE's Secure Testing Framework™.



2009: Introduction of the multi-modal Integrated Platform, a solution that integrates multiple test delivery platforms with one registration system and one set of results for each candidate.



Pearson VUE acquires Integral7, a leading credential management software provider, adding best-in-class client and candidate tools to the company's portfolio.

Opening of office in Dubai.



Launch of mindhub™, the certification preparation marketplace that provides study guides, practice tests and other learning materials to candidates globally.

2010

India-based call center begins operations.

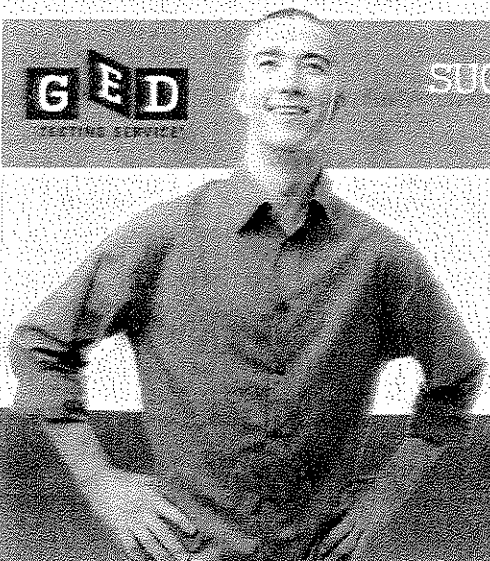
Pearson VUE named one of Minnesota's Best Places to Work.

2010: Pearson VUE acquires Integral7, a leading credential management software provider, adding best-in-class client and candidate tools to the company's portfolio. • Launch of mindhub™, the certification preparation marketplace that provides study guides, practice tests and other learning materials to candidates globally. • India-based call center begins operations. • Pearson VUE named one of Minnesota's Best Places to Work.



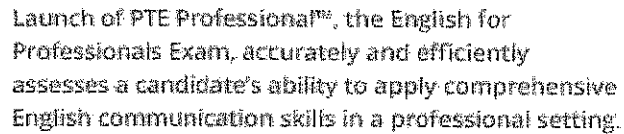
SUCCESS IS JUST CLICKS AWAY

Introducing the GED® Test on Computer



2011

Pearson VUE partners with the American Council on Education to create a new public-private partnership for GED Testing Service that drives the future direction, design and delivery of the GED® Test. Nearly 800,000 GED® tests are taken that year.



2012

Pearson VUE acquires Certiport, the leading provider of foundational-level exams and practice test solutions. Thousands of Certiport test centers deliver exams for Microsoft, HP, Adobe and other IT leaders.



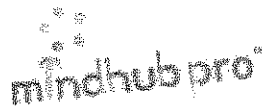
2013

Pearson VUE acquires Exam Design and adds a best-in-class authoring tool to the company's existing item development expertise. ExamDeveloper™ allows complete collaboration with other content writers and then manages content throughout the exam development cycle.

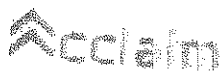
2013: Pearson VUE acquires Exam Design and adds a best-in-class authoring tool to the company's existing item development expertise. ExamDeveloper™ allows complete collaboration with other content writers and then manages content throughout the exam development cycle.

2014

Launch of mindhub pro, the training and learning marketplace developed exclusively for Pearson VUE Authorized® Test Centers.



Launch of Online Proctored exam delivery.



Pearson VUE launches Acclaim, a new enterprise badging solution that offers a new way to issue, verify and share digital credentials.

2014: Launch of mindhub pro, the training and learning marketplace developed exclusively for Pearson VUE Authorized® Test Centers. • Launch of online proctored exam delivery. • Pearson VUE launches Acclaim, a new enterprise badging solution that offers a new way to issue, verify and share digital credentials.

2015

**REACH
HIGH** WITH **GED
WORKS**
HIGHSCHOOL
EQUIVALENCY
PROGRAM

GED Testing Service partners with Walmart, KFC, Taco Bell and Southeastern Grocers to launch GEDWorks™, a comprehensive program for employees who want to earn their GED credential.

The acquisition of ProctorCam allows Pearson VUE clients to extend the reach and breadth of their testing programs through online proctored delivery.

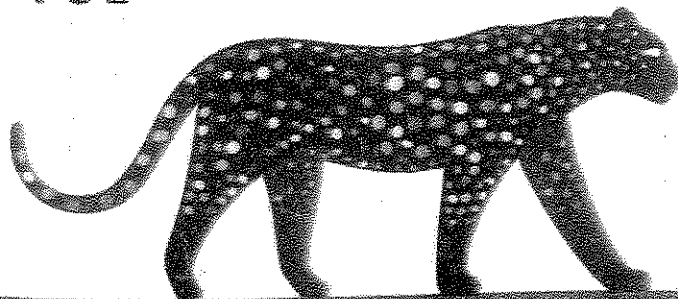


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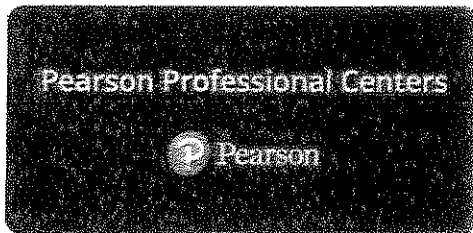
Pearson | VUE

2016

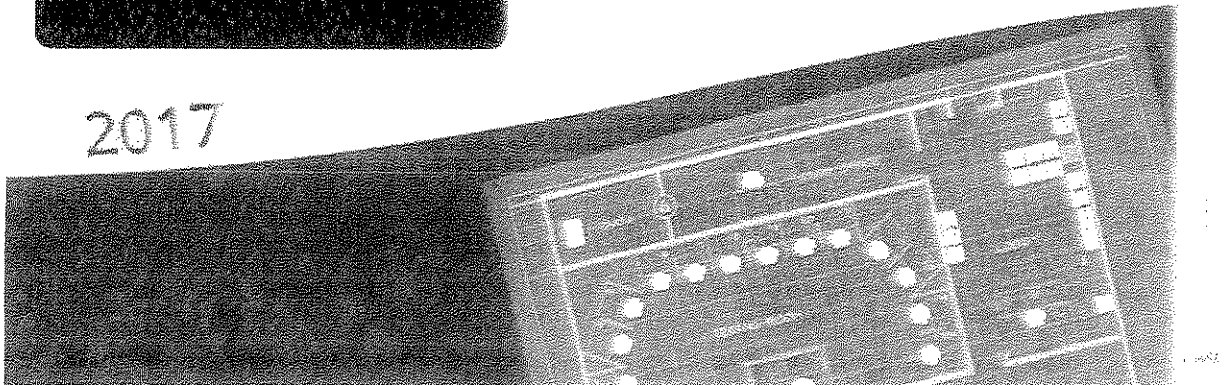


Pearson VUE launches a new brand!

Pearson VUE launches a new brand!



Pearson VUE commits to build 34 and expand 22 Pearson Professional Centers, increasing testing capacity by 25%.



Pearson VUE commits to build 34 and expand 22 Pearson Professional Centers, increasing testing capacity by 25%.

To view this page as text-only, please click [here \(/About-Pearson-VUE/Discover-Pearson-VUE/Company-history/Company-history-text.aspx\)](/About-Pearson-VUE/Discover-Pearson-VUE/Company-history/Company-history-text.aspx).

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[trk=tyah&trkInfo=tarId%3A1409733568695%2Ctas%3Apearson%20vue%20%2Cidx%3F1-4](https://www.linkedin.com/company/2141?trk=tyah&trkInfo=tarId%3A1409733568695%2Ctas%3Apearson%20vue%20%2Cidx%3F1-4))



(<https://www.youtube.com/channel/UCy21pjcLIjThj3AtBbSeWDw>)

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